

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM JAMES WALLACE, II,
Plaintiff,
v.
J. WHITE, et al.,
Defendants.

Case No. 1:20-cv-00844-NONE-EPG (PC)

ORDER REGARDING SUBMISSION OF
SUBPOENA AND EXTENDING DEADLINE
TO SUBSTITUTE NAMED DEFENDANT IN
PLACE OF DOE DEFENDANT

William James Wallace, II (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

This case proceeds on Plaintiff’s Eighth Amendment claim for unconstitutional conditions of confinement against Defendants Lopez, Wade, White and John Doe. (ECF Nos. 18, 19.) In relevant part, Plaintiff’s operative complaint alleges that Unit H2 has inoperable plumbing, toilets overflow, and the floors are constantly covered in human waste. (*See* ECF No. 18 at 4.) According to Plaintiff, he reported the unsanitary environment to the Doe defendant, and they took no actions to abate further exposure to human waste. (*Id.*)

On July 9, 2021, the Court entered an order permitting Plaintiff to subpoena documents from the Wasco State Prison that may allow him to identify the Doe defendant. (ECF No. 38.) The Court further set a deadline of 120 days from the date of service of the order for Plaintiff to

1 file a motion to substitute the named individuals in place of the Doe defendant. (*Id.*) Plaintiff was
2 served with the Court's order by mail on July 9, 2021.

3 On July 22, 2021, Plaintiff submitted a USM-285 Form and an AO88B Subpoena form.
4 (*See* ECF No. 39.) The subpoena is directed to "James White Associate Warden" and requests
5 production of "Unit H2 maintenance records, fire & safety inspections between 1/21/15 to
6 07/19/21; photographs of showers, toilets, floor drains & inoperable windows, ventilation exhaust
7 and registers inside and outside." The subpoena commands production of these documents to Unit
8 H2 at Wasco State Prison on July 19, 2021 at 2:14 p.m. The subpoena also commands Wasco
9 State Prison to allow Plaintiff to inspect Unit H2 on July 19, 2021, at 2:14 p.m.

10 As explained in the Court's order entered on July 9, 2021, Plaintiff is allowed to subpoena
11 documents for the purpose of identifying the Doe defendant. (*See* ECF No. 38.)¹ However, the
12 documents identified in the subpoena are not relevant to identifying the Doe defendant. Plaintiff
13 does not allege that the Doe defendant was responsible for maintenance or fire and safety
14 inspections. Additionally, photographs of the condition of Unit H2 are not related to identifying
15 the Doe defendant. The subpoena also commands that Plaintiff be permitted to inspect Unit H2.
16 However, such an inspection also does not have any bearing on the identity of the Doe defendant.

17 The Court therefore will not direct the United States Marshal to serve the subpoena
18 Plaintiff submitted on July 22, 2021, but will allow Plaintiff to complete and return new AO 88B
19 and USM-285 forms. In describing the documents to be produced, Plaintiff should only identify
20 documents that will help him identify the Doe defendant.² If Plaintiff seeks additional documents
21 regarding the merits of his claims, he may request them from Defendants or file a motion for a
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23 ¹ Pursuant to the Scheduling Order, Plaintiff may subpoena other documents from someone who is not a party in this
24 case but he must first file a request for the issuance of a subpoena and (1) identify the documents sought and from
25 whom; (2) explain why the documents are relevant to the claims in this case; and (3) make a showing in the request
26 that the records are only obtainable through a third party. (ECF No. 36.) Additionally, the Court will consider
granting such a request *only if* the documents sought are not obtainable from Defendants through a Rule 34 request
for production of documents. (*Id.*) Plaintiff has not explained how the documents he seeks are relevant to his claims
or made a showing that the records are only obtainable through a third party. Plaintiff also has not submitted evidence
that he previously attempted to request these documents from Defendants.

27 ² The subpoena also commands production of documents on July 19, 2021, but that date has passed. If Plaintiff
28 completes and returns another form AO 88B, he should identify a date for production that gives the recipient a
reasonable amount of time to respond.

1 subpoena *duces tecum* as outlined in the Scheduling Order. (See ECF No. 36.) Additionally, the
2 Court will extend the deadline for filing a motion to substitute a named defendant in place of the
3 Doe defendant.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Clerk of Court is directed to send Plaintiff a copy of form AO 88B and a copy of
6 form USM-285;
- 7 2. Plaintiff has thirty days from the date of service of this order to complete and return
8 form AO 88B and form USM-285;
- 9 3. Plaintiff has 120 days from the date of service of this order to file a motion to
10 substitute named defendants in place of the Doe defendant; and
- 11 4. Failure to comply with this order may result in the dismissal of the Doe defendant.

12 IT IS SO ORDERED.

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14 Dated: July 26, 2021

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/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE